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2 June 1, 2011

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1 BEFORE:

2 HON. BRIAN R. MARTINOTTI, J.S.C.
3 HON. DAVID A. KATZ, U.S.D.J.

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2 JUDGE MARTINOTTI: Everyone, welcome
3 again to Bergen County. It is my privilege to
4 introduce Judge Katz, who will be presiding over
5 this matter with me.

6 JUDGE KATZ: Thank you. Please be
7 seated, ladies and gentlemen.

8 JUDGE MARTINOTTI: Before we get
9 started, we have a phone number for call-in.

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11 (A discussion off the record
12 occurred.)

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14 JUDGE MARTINOTTI: This is Judge
15 Martinotti. Judge Katz is seated to my left. We
16 are on the record in Bergen County, New Jersey, on
17 the DePuy Joint Federal and State Case Management
18 Conference.

19 JUDGE KATZ: Thank you very much,
20 Judge Martinotti.

21 I very much appreciate the
22 opportunity to appear here with Judge Martinotti and
23 the leadership and attorneys in the New Jersey cases
24 involving the DePuy hip recall, as well as the MDL
25 case now centered in my court in the Western

1 Division, Northern District of Ohio.

2 I want to welcome the large number of
3 attorneys who have appeared this afternoon. We're
4 sorry we ran a little late in starting. Those of
5 you standing in the back who wish, there are some
6 seats down in here. Please don't worry about
7 disturbing, just come down and sit down if you wish.

8 Let me articulate that which I had
9 indicated to others. Judge Martinotti and I desired
10 to have -- and he will speak for himself, obviously,
11 he is more than capable of doing so -- to have this
12 joint meeting both for the benefit of both the MDL
13 and New Jersey cases, that is, to share information,
14 where we are, where we hope to go, as Courts and you
15 as attorneys.

16 We have an agenda which we will plod
17 through and share with all those here and on the
18 telephone with the effort to promote that
19 cooperation between federal and state, and not just
20 cooperation between federal and state judges, that's
21 really easy when you have someone of Judge
22 Martinotti's character, but between the leadership
23 and individual lawyers in the MDL and New Jersey and
24 other state court proceedings in this MDL case of
25 mine.

1 I'd like now to begin the formal and
2 informal agenda, and with a report on pending MDL
3 matters -- MDL cases, which will then be followed by
4 a report on the New Jersey cases.

5 Mr. Tucker.

6 MR. TUCKER: Thank you, Your Honor.

7 This is the third MDL hearing since
8 the Court's appointment of leadership. And over the
9 course of the last couple months, the task of the
10 leadership on the plaintiffs' side and on the
11 defense side for this MDL has been to put in place
12 the foundation for issues that were important not
13 just in the MDL, but important in the state court
14 litigation here in New Jersey and Maryland and
15 elsewhere.

16 We'll talk later on this agenda about
17 the explant preservation order which has --

18 JUDGE MARTINOTTI: Go ahead. I'm
19 sorry, somebody must have just talked out. I'm
20 sorry.

21 PHONE SPEAKER: We can't hear him.

22 JUDGE MARTINOTTI: Okay. Maybe speak
23 louder and I'll move the speaker of the phone.

24 MR. TUCKER: So what we've tried to
25 do is we put in place foundational pieces for the

1 litigation that are important here in the MDL, as
2 well as in the state court litigation in New Jersey
3 and Maryland and where else -- wherever else we may
4 have state court litigation, which includes the
5 explant preservation order, a protective order and a
6 means by which counsel can easily file their
7 complaints in the MDL using a short form complaint,
8 which we'll talk about as well.

9 The important point that comes out of
10 this is that the MDL leadership has been able to put
11 in place, to the benefit of New Jersey and Maryland
12 and the other state courts litigation, the
13 foundational pieces that we can move quickly ahead
14 with discovery in working these cases up.

15 JUDGE KATZ: Thank you.

16 MR. BUCHANAN: Good afternoon, Your
17 Honors. Dave Buchanan for the New Jersey
18 plaintiffs.

19 We're a little newer to the party
20 here in New Jersey, as the Courts are aware. We had
21 our first CMC before Judge Martinotti in early May.
22 We've begun and have successfully achieved
23 organizational structure with the help of the Court.
24 We've also gotten well underway on the first day
25 orders, as I call them, many of which we were able

1 to leverage I think the good work that's already
2 been done within the MDL.

3 We've taken Judge Martinotti's
4 guidance at the initial CMC at heart to work with,
5 as best we could, the good work that's already been
6 done by the MDL folks. We've identified a few New
7 Jersey-specific wrinkles, which we'll identify among
8 plaintiffs' counsel and see what proposals can be
9 resolved with Ms. Sharko. We've yet to do that, but
10 anticipate doing that shortly.

11 And I thank, frankly, the MDL folks
12 for the work they've done over the last three months
13 to give us a springboard to catch up so quickly.

14 JUDGE MARTINOTTI: The New Jersey
15 Court is cognizant that our prior order was entered
16 less than 30 days ago, and in fact had given counsel
17 30 days to meet and confer on various issues. We
18 did discuss this off the record informally at our
19 conference earlier, and I did add one component to
20 that order, which is that counsel -- I'm going to
21 get to that later in the agenda. Counsel is going
22 to continue to meet and confer regarding a short
23 form complaint and answer which was added pursuant
24 to today's conference.

25 And, Counsel, I thank you for your

1 cooperation, and I know the issues are going to be
2 worked out.

3 JUDGE KATZ: And I should have done
4 this at the beginning.

5 I have talked with other judges who
6 have cases pending in state court, including Judge
7 Mittelstaedt in Maryland, who may be on this call.
8 If so, welcome. She was in trial and was not sure
9 whether she would be capable of breaking the trial
10 at a critical point. The judges in Georgia, Texas
11 and California. And those people will also be, and
12 have been, given copies of documents requested from
13 the MDL, as others have. And, hopefully, that will
14 assist counsel and the Courts in moving forward for
15 the benefit of both plaintiffs, defendants and their
16 respective counsel.

17 JUDGE MITTELSTAEDT: I just wanted to
18 say that I am here, Judge Mittelstaedt, and I am
19 glad to be a part of this. And I look forward to
20 hearing from everyone.

21 JUDGE KATZ: Thank you for being
22 here, Judge.

23 Steve, you were going to speak on the
24 next issue, other state court cases and
25 coordination?

1 MR. SKIKOS: Your Honor, on behalf
2 of --

3 JUDGE KATZ: Or were you?

4 MR. SKIKOS: I can talk about
5 California.

6 JUDGE KATZ: All right. Why don't we
7 do that.

8 MR. SKIKOS: We had our first
9 informal meeting with Judge Kramer, who has been
10 assigned to the JCCP by the California Supreme
11 Court. We have a leadership structure that has been
12 put in place in California. We have -- many of the
13 members who are in the leadership structure in
14 California are also participating in the MDL. Some
15 are here. And California is going to move
16 relatively quickly, but there's a lot of cooperation
17 with the MDL. And we're glad to be here in New
18 Jersey.

19 JUDGE KATZ: Thank you.

20 Susan, Ms. Sharko.

21 MS. SHARKO: In addition to
22 California, we have a small number of cases in a
23 variety of state courts, as Your Honor has outlined,
24 and we would hope that we can coordinate discovery
25 with the state courts as well and use the orders

1 that we've all worked on so hard with the benefit of
2 input from lawyers in the MDL and New Jersey and
3 other states.

4 JUDGE KATZ: This may be an
5 appropriate point in the proceedings for me to
6 articulate why we, as judges, feel so strongly about
7 the cooperation being sought in this and other cases
8 of similar import and makeup.

9 The most expensive portions in these
10 kinds of cases is discovery on the one hand and
11 experts on the other. If duplication of effort with
12 respect to those two areas alone can be achieved
13 between and among the state and federal proceedings,
14 then it seems to me, at least, that the costs of the
15 proceedings overall will be diminished with the
16 attendant result of being able to move forward in a
17 more expeditious manner than if it were fragmented.
18 And that's one of the goals of this cooperation
19 which we as judges are seeking.

20 JUDGE MARTINOTTI: Those of you who
21 appear before me know I concur 100 percent with
22 Judge Katz on, it doesn't make any sense to me in
23 New Jersey to reinvent the wheel. We are, as
24 counsel had indicated, a little behind the MDL, yet
25 we hope to catch up shortly.

1 I would encourage and continue to
2 encourage meeting and conferring regarding the
3 adoption of as many orders that the MDL has entered
4 as possible, understanding that there may be New
5 Jersey wrinkles, if you will, with some of those
6 orders, which certainly can be addressed. But I
7 think it is in everyone's best interest, plaintiff,
8 defendant and certainly the Court's, that we
9 continue this coordinated effort moving forward.

10 JUDGE KATZ: Thank you.

11 The next item on the agenda, pardon
12 me, was item 4, "Preservation order and its
13 protocol."

14 Bob Tucker.

15 MR. TUCKER: Your Honor, from the
16 outset of the litigation, I think counsel for both
17 plaintiffs and defendants recognized that the
18 preservation, testing and inspection of explants
19 were an important issue that we wanted to make sure
20 we tried to get right. And so the leadership
21 appointed teams, people to negotiate an order and a
22 protocol for the testing and inspection, which has
23 been put in place, which ensures that explants are
24 preserved and tested and inspected pursuant to a
25 protocol that both sides have agreed upon.

1 We've done this because we have
2 explants from hospitals and from surgeons throughout
3 the country. And we wanted to make sure that we had
4 a set protocol in place so that hospitals, no matter
5 where they were in the country, surgeons, no matter
6 where they were in the country, knew what they were
7 to do with the explants and had a process in place
8 for making sure that they were preserved. And that
9 order has been entered in the MDL. We hope that it
10 will be entered in New Jersey and in California and
11 in the other states so that we have a nationwide
12 consistent protocol for the hospitals and surgeons
13 to follow in terms of preserving, testing and
14 inspecting the explants, which lead to evidence in
15 the case.

16 MR. BUCHANAN: For New Jersey, Your
17 Honors, we have designees in leadership in New
18 Jersey looking at the current explant protocol from
19 the MDL. Some of us have familiarity with the MDL
20 protocol and believe it's a good foundation, good
21 guidance from the Courts, excuse me, to the
22 hospitals and physicians for preservation of
23 materials. It's being circulated among the broader
24 New Jersey group. We'll be conferring with Ms.
25 Sharko in the event there's any issue that needs to

1 be taken up.

2 JUDGE KATZ: Thank you. It seems to
3 me worth repeating how important we view this
4 preservation order and the attendant protocol in the
5 scheme of things. It is protective, not only of the
6 plaintiff and plaintiff's counsel, but of the
7 surgeon and the hospital on the plaintiff's side and
8 the defendant on the defendant's side.

9 Most hospitals are most happy to give
10 up control of the explant, assuming that it will be
11 deposited in an appropriate place, hospital or other
12 research center, with an attendant protocol. So if
13 there is any question in your minds as to what to do
14 with the explant, I urge you to contact the
15 leadership in the MDL, or very soon in New Jersey,
16 to find out how to handle those explants if you
17 don't already know.

18 MS. RELKIN: I just wanted to add
19 that -- this is Ellen Relkin. And anecdotally, my
20 experience, it's worked, because we have had
21 previous difficult conversations with hospital risk
22 managers who didn't want to save it, said, well,
23 we -- the methodology we sent them was violating
24 hazardous waste rules, red bag garbage, all this
25 stuff. Since they've gotten the letters, we have

1 not had any problems with preserving the device. So
2 I think it's had some success already.

3 JUDGE KATZ: Thank you.

4 Anything more, anyone on that issue?

5 (No response.)

6 JUDGE KATZ: This morning we went
7 over with leadership a couple of minor changes to
8 the protective order. That protective order, as it
9 has been ordered or altered with respect to a couple
10 of minor items, which you might want to address,
11 Bob, in a moment, is in the process of being
12 replicated and will be filed either tomorrow or
13 Friday and will be provided immediately to those
14 state court judges who have evidenced a desire to
15 have copies of orders.

16 MR. TUCKER: Again, with respect to
17 the protective order, the leadership got together,
18 negotiated that. That order was entered at the last
19 MDL hearing. There are a couple of technical
20 amendments to be made to it that arise from actually
21 working with the protective order as the documents
22 are being produced now, and so those technical
23 amendments will be provided. One of them is to
24 permit the defendants to show protected documents to
25 their experts, which is set out in paragraphs 11(a)

1 and 11(b). And the other is that the protective
2 order will apply to counsel and parties in the
3 litigation no matter when they come into the MDL,
4 not just at the time the protective order was
5 entered. But those technical changes will be
6 submitted in to the Court for approval.

7 JUDGE KATZ: Thank you. I've already
8 seen them in handwritten form, and when they are
9 reduced in final copy, we will have them filed.

10 MR. BUCHANAN: Yes, Your Honor. A
11 conformed copy of the MDL protective order has been
12 tendered to New Jersey leadership. It's been
13 circulated. As I've indicated previously, there are
14 some New Jersey issues with our practice here, open
15 access to courts, that have presented some issue in
16 other mass torts, certainly with regard to the
17 filing of certain motions and the showings that need
18 to be made in connection with those and in advance
19 of filing materials under seal, so we just need to
20 make sure we've appropriately accounted for that,
21 and some other comments we've received from New
22 Jersey counsel. That should be resolved in a master
23 markup for Ms. Sharko by the end of the week, and
24 hopefully, or next week, and submit any disputed
25 points to the Court if we can't agree.

1 JUDGE KATZ: And I would imagine that
2 there are other similar considerations in other
3 state courts. And so there may be some tweaking
4 necessary in those state courts. And I would assure
5 any of the state court lawyers and judges that
6 they'll have the full cooperation of the MDL
7 leadership and with the judge.

8 MR. BUCHANAN: Thank you, Your Honor.

9 JUDGE KATZ: Anything further you
10 wanted to add, Ellen?

11 MS. RELKIN: Michelle Kranz, our
12 liaison, had gotten a number of inquiries from
13 individuals wondering if they needed to send to her
14 a copy of their signature before they have access.

15 That's not essential, it's not
16 required, she does not need to maintain them.
17 Everyone who is in the litigation, and particularly
18 once the amendment is made to clarify it, it's
19 deemed to apply. So you don't have to worry about
20 actually physically getting us a copy of your
21 signature. It applies, and then access to the
22 documents is available.

23 JUDGE KATZ: As I understand it, it
24 applies immediately upon filing of the case within
25 the MDL and would there, after it was adopted by,

1 let's say, New Jersey, it would apply in the same
2 fashion to those litigants at that time.

3 MR. BUCHANAN: That's our
4 understanding, Your Honor, without need to sign on
5 to the attachment.

6 JUDGE KATZ: Short form complaint and
7 master amended answer accepted.

8 MS. SHARKO: Yes. An order was
9 entered in the MDL providing for the filing of a
10 master answer short form and the use of a short form
11 complaint and a short form answer. After we started
12 working with pleadings and using them, both sides
13 had some minor changes they wanted to implement.
14 We've exchanged those, and I would hope that we can
15 get an amended form of Case Management Order Number
16 4, which deals with this, to the Court hopefully
17 within the next few days, and then simultaneously,
18 in the short run, get the same process up and
19 running in New Jersey.

20 MS. RELKIN: That accurately
21 summarizes the situation. We should have it done
22 very soon.

23 MR. BUCHANAN: That's on our punch
24 list for New Jersey. We've got, as you know, a few
25 orders to catch up on, but it's certainly our desire

1 to streamline the process for filing it in state
2 court for efficiency among plaintiffs' counsel and
3 for the ease of the defendants in answering our
4 complaints.

5 JUDGE KATZ: Very good.

6 Anything else on that issue?

7 (No response.)

8 JUDGE KATZ: Let's move on to the
9 preliminary disclosure form, et cetera, item number
10 7.

11 Mr. Skikos.

12 MR. SKIKOS: As the Courts know,
13 these patients are in a varied state of medical
14 history. Some have been implanted and still have
15 the implant in and others have been revised.

16 So in the MDL, we had thought that it
17 would be productive to try to put together
18 information on each patient so that it would -- we
19 would be able to come up with a navigational plan
20 for the discovery in this case.

21 So we've agreed to a one-page form
22 that the plaintiffs will fill out. And that
23 one-page form is available to California and New
24 Jersey.

25 And we've also agreed, we handed out

1 the case management order that was attached to it.
2 The terms of the one-page form is that it's not a
3 discovery response. It's not a verified discovery
4 response. The lawyer actually fills it out. And
5 it's provided within 30 days after it's entered as
6 an order.

7 The other important terms of it are
8 that the defendants will turn over to us if they
9 have the explant. They'll let us know in an agreed
10 time period.

11 Also, and it's a very important part
12 of this negotiation, that there is information that
13 is in possession of sales reps. Sales reps are
14 nonemployees, my understanding, of the company. So
15 in working with the defense over the last month,
16 we've put together a team on behalf of the MDL,
17 California and New Jersey to negotiate a
18 preservation order for the sales reps and a
19 production order.

20 The production order would include,
21 for the case-specific side of it, production of
22 specific sales rep information as part of the
23 defendant fact sheets. So that team is in process
24 with negotiations as part of the cooperation of
25 California, MDL and New Jersey to get that order.

1 And that is very important for the progress of this
2 litigation.

3 And then the one-page form, I have a
4 handwritten order here, which I'll provide to Cathy
5 at the end.

6 JUDGE KATZ: Thank you.

7 Ms. Sharko.

8 MS. SHARKO: Thank you. We would
9 hope that we can get use of the same form with the
10 same implementation order in New Jersey, and I look
11 forward to hearing from Mr. Buchanan with regards to
12 that.

13 MR. BUCHANAN: As I indicated prior
14 to the open conference, I had not been familiar -- I
15 had not seen the final form of the order. I looked
16 at it quickly, as did co-leadership, and it looks to
17 be the type of information we ordinarily exchange as
18 part of this case management process with the Courts
19 so the Court can understand the docket and the
20 parties can understand the docket and facilitate, if
21 you will, a thumbnail sketch of what the cases look
22 like. So I would think we'd be able to work with
23 Ms. Sharko to resolve that.

24 We haven't had a chance to circulate
25 it more broadly to our many New Jersey counsel who

1 are in the room today. We'll do that expeditiously
2 and get back to Ms. Sharko promptly.

3 JUDGE KATZ: Thank you, Mr. Buchanan.

4 JUDGE MARTINOTTI: Just to pick up on
5 that for a second. We did discuss, during our prior
6 conference off the record, counsel's going to
7 address the issue of whether or not we were going to
8 do a spreadsheet on this particular litigation also.

9 MR. BUCHANAN: Thank you, Your Honor,
10 yes.

11 And I think we'll do that because,
12 from the Court's perspective, and, frankly,
13 plaintiffs' liaison counsel's perspective, we'd like
14 to be able to see the cases in a thumbnail sketch.
15 And I'll work with co-plaintiffs' counsel to resolve
16 on a proposal to Ms. Sharko as to the information we
17 want to provide.

18 And looking at the form, it's a bit
19 more extensive than the type of information we
20 ordinarily provide and may be cumbersome if we
21 include all that information in the spreadsheet. So
22 I'll see what Ms. Sharko would like to do and what
23 the Court would like, in terms of information on the
24 submitted spreadsheet.

25 JUDGE MARTINOTTI: Yes. Submit it to

1 the Court. I will have to review that with,
2 obviously, with administration and our IT department
3 to see how it's going to be implemented. And
4 subject to my review of the information contained on
5 it also.

6 MR. BUCHANAN: That's fine. Thank
7 you.

8 JUDGE MARTINOTTI: Okay?

9 JUDGE KATZ: Thank you.

10 Item number 8, "Discovery update."

11 Ms. Sharko.

12 MS. SHARKO: Yes. We've been working
13 very hard with the plaintiffs from all
14 jurisdictions. There is a Rule 26 committee, which
15 for the plaintiffs contained representatives from
16 the MDL litigation, Mr. Gornick and others who have
17 taken a lead role in California, and Mr. Robinson.
18 And then Mr. Buchanan's played an active role on the
19 committee, and he's here wearing his New Jersey hat.

20 The committee has agreed on all
21 manner of things, from metadata to issues of format,
22 Bates numbering and the like. And a protocol order
23 embodying all those agreements will be entered
24 shortly in the MDL.

25 We have produced our first

1 installment of documents on May 19, 200,000 pages.
2 The next production will occur on or about June 20
3 and should be approximate 700,000 pages.
4 Thereafter, we anticipate monthly productions.

5 At this point, since the protective
6 order was only issued in the MDL and in Maryland,
7 the documents were produced to MDL counsel and to
8 the Maryland lawyer, who also has a fair number of
9 cases in New Jersey. Once we get protective orders
10 entered in California and New Jersey, we would
11 anticipate that each month we would provide the
12 documents to -- one set of the documents to the MDL,
13 one to California, one to New Jersey, and then the
14 plaintiffs' lawyers will figure out sharing from
15 there.

16 In terms of a plaintiff and defense
17 fact sheet, that's next on the punch list. We've
18 given the plaintiffs a proposed plaintiff fact
19 sheet. We anticipate sitting down and discussing
20 that with them soon. We are also anticipating them
21 returning the favor with a draft defense fact sheet.
22 And we will be prepared to discuss that, and we
23 anticipate an agreement. Part of the defense fact
24 sheet will include information from the call reps
25 and distributors.

1 JUDGE KATZ: Thank you.

2 Mr. Buchanan.

3 MR. BUCHANAN: Yes, just to address
4 briefly documents. Before I was appointed by the
5 Court as liaison counsel for New Jersey, I was
6 serving as a co-chair of discovery in the MDL and
7 have been active on the Rule 26 committee for the
8 plaintiffs, helping to meet and confer on a
9 production format and try and get documents flowing
10 as promptly as we could.

11 To some extent, I think it's a very
12 good production order. It was tailored to a very
13 specific vendor that the parties are using in the
14 MDL. I want to be candid with the Court here today
15 that it has not been decided what New Jersey is
16 going to do in terms of managing the documents,
17 whether they're going to be self-managed within
18 individual firms or whether they're going to be
19 managed on a composite system. That's something
20 that needs to be resolved, to the extent any format
21 adjustments may be needed to ensure the documents
22 can be used on whatever platform New Jersey agrees
23 to use. And I'll confer with defense counsel on
24 that.

25 I think that's a technical issue, and

1 a lot of care was spent trying to make sure we got
2 good information in the production format. So it's
3 clearly almost all the way there. I just want to
4 acknowledge that there may be technical issues that
5 have to be resolved for the defense, based on the
6 direction New Jersey goes for document review.

7 JUDGE KATZ: Thank you.

8 Ms. Relkin.

9 MS. RELKIN: Just reporting on the
10 review of the documents. We're very pleased that
11 production is rolling. There are a few little
12 technical glitches that the technical people are
13 seeking to resolve. And then there's a few
14 unresolved issues that we hope we can work out
15 regarding the cutoff for the first year of
16 production. Plaintiffs believe earlier years prior
17 to 2001 is important. There's issues about
18 redaction for relevance and issues on search terms,
19 and we're trying to work it out and hopefully we'll
20 work it out. But there's a possibility it might
21 not.

22 JUDGE KATZ: Mr. Tucker.

23 MR. TUCKER: With respect to the last
24 three issues raised by Ms. Relkin, the first we
25 heard of it was today. And we, of course, will meet

1 and confer and work through those issues, as we
2 always have.

3 With respect to Mr. Buchanan's
4 comments about perhaps needing a different format
5 for document production in New Jersey, again, my
6 reaction to that, and it's the first I heard of it
7 is today, but my reaction is that the benefit of
8 coordination is that we're not redoing formats for
9 document production based upon jurisdictions. The
10 lawyers involved here in New Jersey negotiated and
11 participated actively in the negotiation of the MDL
12 production format. We have put in place the systems
13 necessary to produce documents in accordance with
14 that production format. And for us to have to go
15 back and change production formats, whether it be
16 New Jersey or any other jurisdiction, would be very
17 expensive and very difficult, and most importantly,
18 delay the production of documents. And that is not
19 what our intent is. Our intent is to try and move
20 these documents from our side of the table to their
21 side of the table. So we're glad to talk through
22 the technical issues on production format. But as a
23 kind of umbrella issue, the importance of
24 maintaining that production format is very important
25 to us in terms of being able to achieve the

1 efficiencies and objectives of the MDL.

2 MR. BUCHANAN: Your Honors, I think
3 just to be clear, I've spent a lot of time doing
4 electronic discovery over the years in a lot of mass
5 torts. I think we've resolved in a fairly standard
6 production protocol in this case. But the reality
7 is, the New Jersey litigation is a little different
8 than the MDL in the sense that there is leadership,
9 yes, and we make documents available, yes. But
10 individual firms may elect to use documents in a
11 particular manner.

12 And what I want to ensure, by
13 whatever means they're delivered to us, that firms
14 can have the maximum opportunity to review those
15 documents if they wish to. We've never had an issue
16 with this in many large mass torts that I've worked
17 on, and I wouldn't anticipate that we would have one
18 here. But I did want to note that the production
19 format was tailored to a particular vendor that I've
20 never worked with in the past, but had a specific
21 specification.

22 There are industry standard
23 specifications that document production vendors use,
24 and in my experience, routinely provide a
25 different -- it's called a load file, but a

1 different file that will make it work on different
2 people's systems.

3 So I appreciate the concern of
4 defense counsel. I've seen it resolved quite easily
5 by other vendors and other counsel in other cases.
6 I think it may be premature to jump to a concern.

7 JUDGE KATZ: Okay. Those who are
8 less technically astute, such as me, and those green
9 among us, should readily understand that 900,000,
10 quote, pages, unquote, will not be produced in hard
11 copy. We're not going to create a field where there
12 was a forest. It's all in electronics.

13 I think that completes 8, does it
14 not?

15 Mr. Tucker or Ms. Sharko.

16 MS. SHARKO: Item number 8 on the
17 agenda is simply to inform the Court and counsel
18 that the MDL panel has created a separate MDL for
19 Pinnacle. And that will be in Dallas, Texas before
20 Judge Kincaid.

21 JUDGE KATZ: That was the hip
22 unrelated to the ALS or ASL?

23 MS. SHARKO: Yes. The Pinnacle has
24 not been recalled, contrary to some of the
25 advertising out there.

1 JUDGE KATZ: Okay. That completes
2 the agenda that we had created among the leadership
3 of both the MDL and the input of New Jersey.

4 I'll ask if any other of the
5 leadership wishes to infuse any other topic on this
6 meeting?

7 (No response.)

8 JUDGE KATZ: Then I'll turn and ask,
9 Judge, any questions that you have of me or of the
10 MDL leadership or the New Jersey leadership?

11 JUDGE MARTINOTTI: I do not. I just,
12 with respect to New Jersey, we just need to address
13 a few housekeeping issues, specifically when our
14 next case management conference is going to be.

15 My thought is July 19th. Do you know
16 when the next MDL conference is?

17 MS. SHARKO: I'm required to be down
18 before Judge Higbee on August -- I'm sorry, on July
19 18, 19 and 20. The 21st is fine.

20 JUDGE MARTINOTTI: Is the 21st okay?

21 MR. BUCHANAN: That's fine, Your
22 Honor.

23 MS. SHARKO: Thank you.

24 JUDGE MARTINOTTI: What time,
25 Counsel? You tell me because I don't know if anyone

1 is travelling from far that needs to make
2 arrangements, child care.

3 MS. SHARKO: Any time is fine for the
4 defense.

5 MR. BUCHANAN: I'm local. 10:00 or
6 1:00 are fine. Either one.

7 JUDGE MARTINOTTI: 10:00?

8 MS. SHARKO: Thank you.

9 JUDGE KATZ: With regard, Judge
10 Martinotti, as to the next MDL meeting, in
11 discussing the matter with Steve Skikos, it is my
12 understanding that now that there has been an
13 organizational meeting in California in front of
14 Judge Kramer, that there is a possibility of
15 scheduling a meeting in California, in San
16 Francisco, admittedly not as nice a venue as here,
17 for July or August.

18 I will await the opportunity to
19 discuss the matter with Judge Kramer. As soon as
20 those dates are made available to me, and they will
21 be in the alternative, I will disclose them to the
22 MDL leadership and others, and we will choose a date
23 convenient for the MDL leadership and the California
24 leadership, and others, of course, hopefully will
25 attend as well. I would expect that within the next

1 week to ten days, we would be able to have that
2 conversation, but a lot depends on our respective
3 agendas in the court.

4 Are there any other questions to be
5 raised from those in attendance which are
6 appropriate for this meeting and to be placed on
7 record?

8 (No response.)

9 JUDGE KATZ: Very good.

10 I, on my behalf, and on behalf of the
11 MDL, wish to thank Judge Martinotti for his
12 graciousness in establishing this site at this time
13 for this meeting. It has been extremely helpful to
14 me, and I would hope that it has been helpful to
15 those in leadership for both the MDL and New Jersey
16 and others in attendance. And I look forward to
17 future similar meetings.

18 JUDGE MARTINOTTI: Yes. Several
19 other loose ends on New Jersey's behalf.

20 The prior case management order
21 required counsel to meet and confer within 30 days
22 to reach joint arrangements for agreement on several
23 issues. Understanding that we are still within that
24 30 days, I'm just going to extend that 21 days from
25 today, just to give you some more time to continue

1 to meet and confer on those issues.

2 Our next case management conference,
3 as indicated, is July 21st. I just want to
4 reiterate, and I am not going to continue to say
5 this, but by consent of all parties and counsel,
6 this Court does have permission to contact counsel
7 on an ex parte basis to continue to discuss
8 settlement.

9 Does anybody have a different
10 position on that issue?

11 (No response.)

12 JUDGE MARTINOTTI: Okay, thank you.

13 And also, New Jersey counsel, please
14 contact the attorneys' account to set up an account
15 for filing of pleadings.

16 Again, on behalf of myself, our
17 assignment judge, Peter Doyne, and Judge Polifroni,
18 our presiding judge, plus, of course, my staff, we
19 thank everyone for coming. We welcome and thank
20 Judge Katz and Catherine for coming. It's been an
21 honor and I think a first in the history of Bergen
22 County to ever host such an event, and we hope to
23 continue coordination and cooperation with you,
24 Judge, your staff and certainly all counsel.

25 And with this, we are adjourned.

1 Thank you.

2 One other thing, there is a sign-in
3 sheet. If you did not sign in, please do so. Once
4 the sign-in is completed, we'll make copies and file
5 it.

6 Also, counsel asked to use the
7 courtroom. Feel free.

8 (Hearing concluded at approximately
9 2:05 p.m.)

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1 CERTIFICATE

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3 I, ANN MARIE MITCHELL, a Notary
4 Public and Certified Court Reporter of the State of
5 New Jersey, do hereby certify that the foregoing is
6 a verbatim transcript of the hearing as taken
7 stenographically by and before me at the time, place
8 and on the date hereinbefore set forth, to the best
9 of my ability.

10 I DO FURTHER CERTIFY that I am
11 neither a relative nor employee nor attorney nor
12 counsel of any of the parties to this action, and
13 that I am neither a relative nor employee of such
14 attorney or counsel, and that I am not financially
15 interested in the action.

16

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ANN MARIE MITCHELL, CRR, RDR, CCR

Notary Number: 2356252

20 Notary Expiration: February 22, 2012

CCR Number: 30XI00212000

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